



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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GIL-13-010

April 18, 2013

XXXXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Re-rental Equipment

Dear XXXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXXXXXXXX (“Company”) a request for guidance to determine whether Company is liable for sales and use tax for equipment Company rents from a lessor when Company hires third-party contractors to operate the equipment at events.

The Colorado Department of Revenue (“Department”) issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department regulation 24-35-103.5 at www.colorado.gov/revenue/tax > Tax Library > Rulings.

The Department initially treats your request as one of a general information letter. If you would like the Department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with regulation 24-35-103.5. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction.

Issue

Is Company liable for sales and use tax for equipment Company rents from a lessor when Company hires third-party contractors to operate the equipment at events?

Background

Company is a production event company that primarily rents its stage, sound and lighting equipment to clients for their use at an event. Company states that it rents equipment it owns to clients. Company occasionally rents equipment from equipment rental companies (herein referred

to as “Lessor”). In some instances, Company hires third-parties to operate the equipment and, in other instances, Company’s client will use its own employees to operate the equipment.

Discussion

Colorado levies sales tax on the lease of tangible personal property.¹ For leases of three years or less in duration, the lessor must collect sales tax on the acquisition of the property unless it receives permission from the Department to treat its purchase of the equipment as an exempt sale for resale (lease and sublease) and collect tax from lessees.² However, one method must be chosen and the lessor must use that method for each vehicle or property leased regardless of the duration of the lease contract. If the lessor obtains permission to collect tax from lessees, tax is collected on the amount actually paid on each lease payment.

There are two general principles that apply to your question. First, and as you point out, Colorado does not impose sales tax on wholesale sales, including on lessees who sublease the property to sublessees. Second, a lessee who uses the property cannot claim a wholesale exemption lease from the lessor and collect sales tax from “sublessees.”

The question raised in your letter is whether Company is “using” the equipment when it hires third-party contractors to operate the equipment. Whether a party is “using” property or subleasing the property is resolved by looking at the totality of the circumstances. Who has control of the property is an important consideration. For example, if Company leases a forklift from Lessor and Company’s employees operate the equipment, then the Company is considered the consumer of the leased equipment and cannot claim a resale exemption from the lessor.³ This is also true if Company hires third-parties to perform the work. In such cases, Company, through its subcontracted labor, is the consumer of the rented equipment.

In instances where it is unclear whether the lessee or sublessee is the user of the property, the Department is inclined to view the transaction between the lessor and lessee as a wholesale lease if the lessee separately states on its invoice to sublessee the price for lessee’s labor from the price for the use of the equipment. Although we do not determine the issue here, it appears that Company is the user of the equipment when its subcontractors operate the equipment and, therefore, Company must pay sales tax to the Lessor. However, Company can claim the resale exemption if the equipment it rents from Lessor is operated by the client’s employees. In this case, Company must charge clients sales tax on the lease payments.

The lessor is required to exercise due diligence in determining whether to grant a lessee’s request for an exemption. Unless the exemption is clearly appropriate, the lessor should collect the tax and direct the lessee to file a claim for refund with the Department. In general, a lessor can grant a lessee a resale exemption if the lessee presents a sales tax license and claims the exemption, unless the lessor has reasonable grounds to believe that the lessee is not subleasing the equipment. A lessee that knowingly and incorrectly claims a resale exemption for leased equipment is subject to revocation of the Department’s permission to collect sales tax from sublessees and/or revocation of its sales tax license.

¹ §39-26-102(23)

² Department Publication FYI Sales 56, “Sales Tax on Leases of Motor Vehicles and Other Tangible Personal Property.” You can find this publication on our Web site at www.colorado.gov/revenue/tax and click on Tax Library > FYI Publications > Sales > Sales 56.

³ See, Department Private Letter Ruling PLR-11-007. You can find this publication on our Web site at www.colorado.gov/revenue/tax and click on Tax Library > Rulings > Rulings by Number.

Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-rule counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/revenue/tax for more information about state and local sales taxes.

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue